

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

-----X

FELIPE ROBLES VASQUEZ p/k/a RALDY  
VASQUEZ and CAMPESINO ENTERTAINMENT  
GROUP, INC.,

06 Civ. 0619 (CM)

Plaintiffs,

-against-

FERNANDO TORRES NEGRON, TOMARA  
SOSA-PASCUAL and JULIO DE LA  
ROSA-RIVE,

Defendants.

-----X

**Plaintiffs' Affidavit In  
Opposition Exhibits 7-12**

# Exhibit 7

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

-----x  
FELIPE ROBLES VASQUEZ p/k/a RALDY  
VASQUEZ and CAMPESINO ENTERTAINMENT  
GROUP, INC.,

ORIGINAL

06 CV 0619

Plaintiffs,

-against-

FERNANDO TORRES NEGRON, TOMARA  
SOSA-PASCUAL and JULIO DE LA  
ROSA-RIVE,

Defendants.  
-----x

September 8, 2006

1:00 p.m.

Deposition of FERNANDO TORRES NEGRON, taken  
by plaintiffs, pursuant to Order, at the Law Firm of  
Borstein & Sheinbaum, 420 Lexington Avenue, New  
York, New York, before Denise L. Daniels, a  
Shorthand Reporter and Notary Public.



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1 Fernando Torres Negrón

2 A. Okay.

3 Q. Do you see where it says

4 "Derivative Work?

5 A. Uh-huh.

6 Q. And you see where it says

7 "Complete, both space 6-A and 6-B for derivative

8 work"?

9 A. Yes.

10 Q. And do you see where it says

11 "Identify any pre-existing works on this

12 work" -- excuse me, "any pre-existing work or

13 works that this work is based on or

14 incorporates," do you see that?

15 A. Yes.

16 Q. Did you fill in any pre-existing

17 work in that space?

18 A. No.

19 Q. At the time you filled this out,

20 you were aware that when you wrote "Noche de

21 Fiesta" you listened to an audiocassette of

22 another group playing music and singing,

23 correct?

24 MR. BENNETT: Objection.

25 A. Several songs.

1 Fernando Torres Negrón

2 Q. I'm showing the witness what is  
3 marked as Plaintiffs' 10. At the top it says  
4 "Case 3: 02 CV01728 - HL document 228-10 filed  
5 5/13/2004, 1 of 1. It says "Sworn statement,  
6 Fernando A. Torres Negrón.

7 Have you seen that document before?

8 A. Yes.

9 Q. Did you read it before you signed  
10 it?

11 A. Yes.

12 Q. Did you understand what you were  
13 signing?

14 A. Yes.

15 Q. Did you understand that you made  
16 that statement under oath?

17 A. Yes.

18 MR. BENNETT: Can I review the  
19 document real quick? I don't have a copy  
20 of it.

21 MR. SHEINBAUM: Sure.

22 Q. Is there any statement in  
23 Plaintiffs' Exhibit 10 concerning "Noche de  
24 Fiesta"?

25 A. Yes.

1 Fernando Torres Negrón

2 Q. Which number?

3 A. Number 2.

4 Q. Could you tell us what that says?

5 A. Should I read in English?

6 Q. If you can.

7 A. "I am the sole composer of the song  
8 entitled 'Triste Final,' 'Noche de Fiesta' and  
9 'Bobo por Ti.'

10 Q. You swore to that statement in  
11 August of 2002?

12 A. Yes.

13 Q. That statement is untrue, correct?

14 MR. BENNETT: Objection. At what  
15 time?

16 A. It is true.

17 MR. SHEINBAUM: Mark this as  
18 Plaintiffs' Exhibit 11.

19 (Whereupon, document re "Noche de  
20 Fiesta" marked Plaintiffs' Exhibit 11 for  
21 identification, as of this date.)

22 Q. I'm showing the witness what's been  
23 marked as Exhibit 11. At the top it says,  
24 "Sabrosos Publishing, Inc." It consists of  
25 four pages and according to the third paragraph

1 Fernando Torres Negron

2 federal court in Puerto Rico against music and  
3 production.

4 Q. Were there any claims in this  
5 complaint against Sony Music?

6 A. Yes.

7 Q. I show you what the next document  
8 is. What is that, it's Plaintiffs' Exhibit 13?

9 A. That's another claim that was  
10 submitted.

11 Q. By you?

12 A. Correct.

13 Q. And it says, "Amended Complaint,"  
14 correct?

15 A. Exactly, that's right.

16 Q. And you authorized the filing of  
17 it?

18 A. Correct.

19 Q. And in this action, you made claims  
20 based on "Noche de Fiesta"?

21 A. Correct.

22 Q. And you claim that you're the sole  
23 composer of "Noche de Fiesta," correct, in this  
24 action?

25 A. Correct.

1                   Fernando Torres Negrón  
2       Office in Washington, D.C. of Judge Laffitte's  
3       May 2006 decision?

4                   A.       No.

5                   MR. SHEINBAUM: Let's mark this as  
6       17.

7                   MS. PASCUAL: For the record, the  
8       opinion he's referring to over and over  
9       of Judge Laffitte is under appeal  
10      currently.

11                   (Whereupon, document marked  
12      Plaintiffs' Exhibit 17 for identification,  
13      as of this date.)

14                   MS. PASCUAL: So it's not final.

15                   Q.       On the night that you wrote "Noche  
16      de Fiesta," you listened to a tape or audio  
17      cassette, correct?

18                   A.       Correct.

19                   Q.       And at the time you were listening  
20      to it, you were working on the words to "Noche  
21      de Fiesta," correct?

22                   A.       Not at the same time.

23                   Q.       It was played first?

24                   A.       First and after also. It was a  
25      cassette full of songs.



1 Fernando Torres Negrón

2 Q. And it is possible that one of  
3 those songs was "Nena Linda," correct?

4 MR. BENNETT: Objection.

5 A. It could be. A lot of them could  
6 be.

7 Q. I'm going to show you a document  
8 that was filed in the Puerto Rico action  
9 assigned to Judge Laffitte. It's a declaration  
10 under penalty of perjury. We'll mark this as  
11 18.

12 (Whereupon, declaration in Puerto  
13 Rico Action marked Plaintiffs' Exhibit 18  
14 for identification, as of this date.)

15 MS. PASCUAL: Let the record  
16 reflect that he's being handed a document  
17 that's in English. He's not proficient  
18 in English. He doesn't speak it either.  
19 And it has five single spaced pages.

20 Q. Have you ever seen that before?

21 A. Yes, correct.

22 Q. Is your signature on the last page?

23 A. Correct.

24 Q. Did you provide the information in  
25 that sworn statement under penalty of perjury?

1 Fernando Torres Negrón

2 correct?

3 A. No. What does that have to do with  
4 this?

5 Q. Were you present when "Nena Linda"  
6 was composed?

7 A. No.

8 Q. So you don't know anything about  
9 how it was written?

10 A. No.

11 Q. You mean correct?

12 A. Correct.

13 Q. As to "Noche de Fiesta," according  
14 to the way I understand your testimony, there  
15 was one other person present on that evening,  
16 correct?

17 A. Correct.

18 Q. What's his name?

19 A. Rubin Canuelas.

20 Q. Where does he live?

21 A. Aibonito in Puerto Rico.

22 Q. Do you know his address?

23 A. Not exactly. He lived near my  
24 mother's house.

25 Q. He still lives in the same house as

# Exhibit 8

### Methodology

I was requested to render an objective analysis of two musical works: "Noche de fiesta" and "Nena linda." And, based upon the fact that "Nena linda" was written prior to "Noche de fiesta," as evidenced by the filed copyright certificate for each work, I was asked to provide an opinion as to whether the melody of "Noche de fiesta" was based in whole or in part on the melody of "Nena linda."

A copy of the copyright certificate for each work is attached hereto as Exhibit "A."

In order to render the analysis, I was provided with a copy of the commercially released sound recording containing each work: Bailando y Gozando Con Gozadera (as performed by the group Gozadera) containing "Noche de fiesta" on track 2 and Comercial containing "Nena linda" (as performed by Raldy Vasquez) on track 5.

Attached as Exhibit "B" is a copy of the artwork of each of these recordings.

Attached as Exhibit "C" is a compact disc containing "Noche de fiesta" and "Nena linda" which was made from the above mentioned commercially released recordings.

I listened to the commercially released sound recordings repeatedly to make the analysis contained in this report. I then analyzed the music (melody) and the lyrics (words).

With respect to the music (melody), I transcribed each work using standard musical notation. ("Musical notation" is defined as the combination of symbols used for sound and rhythm. It is like the alphabet which is comprised of symbols for spelling words.)

Attached as Exhibit "D" are is the musical notation only of the music (melody) of "Noche de fiesta" and "Nena linda", respectively.

I also made a sketch of the musical arrangements of "Noche de fiesta" and "Nena linda." The sketch of the musical arrangements is attached hereto as Exhibit "E."

I also transcribed the lyrics (words) of "Noche de fiesta" and "Nena linda." These transcriptions of the lyrics (words) of each work are attached as Exhibit "F".

### Analysis:

After listening to "Noche de fiesta" and then "Nena linda" for the first time, I was struck immediately by the fact that the melody of both works is virtually identical. An ordinary listener or professional musician would not be able to distinguish between the two melodies.

The arrangement places a composition in the context of its style or genre. Neither an arrangement or the instrumentation employed (instruments playing the arrangement) change the basic song or melody around which the arrangement and its elements are built. The arrangement merely adorns the song in the same way a paint job, unique hubcaps or leather seats adorn a car, but do not change its make, model or engine. Thus, regardless of the arrangement or instrumentation employed, the music or melody remains the same.

If the virtually identical nature of the melodies of "Nena linda" and "Noche de fiesta" is readily recognized by the listener, it is further confirmed by the attached musical notation.

The attached musical notation of "Nena linda" and "Noche de fiesta" (Exhibit "D"), containing both melody and a sketch of the musical arrangements, show that though the arrangements differ, the melodies are virtually identical. The reason for this is that the musical arrangement is made after the song is composed; the arrangement is created AROUND the pre-existing melody to fit the style of the arranger, singer and group performing the work.

The following example contains two very popular songs with virtually identical melodies but different lyrics. (Because these melodies are so well known, I have not transcribed them in musical notation):

TWINKLE TWINKLE LITTLE STAR

THE ABC SONG

Twinkle twinkle little star  
How I wonder what you are  
Up above the sky so high  
Like a diamond in the sky  
Twinkle twinkle little star  
How I wonder what you are

A B C D E F G  
H I J K L M N O P  
Q R S, T U V  
W X Y Z  
Now I know my A B Cs  
Next time won't you sing with me

In line 1, there are 7 syllables in each song so that the melodies are identical

In line 2, there 7 syllables in TWINKLE but ABC SONG has 9

In line 3 there are 7 syllables in TWINKLE In ABC there are 7 syllables but syllable 4 is a rest

Line 4 is the same as line three where ABC says "dou-ble-u (rest) X, Y, ZX

In lines 3 and 4, the melodies are varied slightly to accommodate the melodic rhythm of the different lyrics

In lines 5 and 6, both songs have 7 syllables and the melodies are identical

There is no question that these two songs share the same melody, and that, though the melody is slightly varied according to the melodic rhythm of the different lyrics, it is still the SAME melody and is readily recognized by the ordinary listener.

For an illustration of how the above example applies to this report, see Exhibit "D" at letter [A], measure 3 of both "Noche de fiesta" and "Nena linda". The first half of said measure 3 is identical in both songs. However, the second half of "Noche de fiesta" contains a synchopated 8<sup>th</sup> note followed by a quarter note, whereas "Nena linda" contains four 8<sup>th</sup> notes. In each case the notes are identical -- all are E. However, just as in line 2 of TWINKLE TWINKLE and the ABC Song, the melodic rhythm was varied to accommodate the change of lyrics.

If a different musical arrangement were built around each of the above songs, the melodies would remain the same and would be readily recognized, regardless of style, instrumentation, etc.

As explained above, the melodies and structures of "Nena linda" and "Noche de fiesta" are virtually identical. The sketches of the musical scores confirm this from a technical standpoint. Although the works differ in their introductions and "mambos", neither the intros or mambos constitute part of the musical composition. Rather, they are musical "choices" made by the arranger to accompany and adorn the composer's original melody which remains unchanged.

Another way to think of the relationship of "melody" to "arrangement" is to think of the melody as a scoop of vanilla ice cream to which a topping has been added. The vanilla ice cream is fundamental and the same in both dishes. Therefore, whether you top the vanilla ice cream with fudge, sprinkles, granola or a combination of all, the vanilla ice cream (like the melody) remains identifiable and distinct.

"Nena linda" and "Noche de fiesta" are both merengues. Merengues are a sub-genre under the heading of "tropical music." Tropical music is usually divided into two main sections: the song and the *estribillo* or refrain. The *estribillo* is often less structured section of a song where the singer and/or instrumentalists may improvise. A world of choices may be made in this section. Many times a composer will suggest a "coro" with a specific structure to the arranger. (A "coro" is the "call" section of "call and response" -- the response is usually an improvisation but may be written down in the studio). But even in the "coro" section, the similarities between the structures and melodies of "Nena linda" and "Noche de fiesta" are undeniable. The notes and their corresponding rhythms are almost identical; the "coro" section is 16 bars, followed by the call and response of the "coro" and lead vocals. Again, the melodies are virtually identical.

Both "Nena linda" and "Noche de fiesta" are in the key of A minor. In Western music there are 12 tonal centers or "keys." In popular music (including merengue), each key may have two variants called major and minor. There are twenty four keys and thus twenty four choices. Despite the number of choices "Nena linda" and "Noche de fiesta" are in the same key of A minor.

twenty four possible choices. Despite the number of choices, Nena Linda and Noche de Fiesta are in the same key of A minor.

### Conclusions And Opinions

After listening to both Noche de Fiesta and Nena Linda and analyzing the music by examining the notes in the melodies of both works and listening to both of the works, it is my opinion that: (a) to the ordinary listener the melodies of both Noche de Fiesta and Nena Linda are the same and are not distinguishable and (b) technically and musically the melodies of Noche de Fiesta and Nena Linda are virtually identical and not materially distinguishable.

Based upon my professional experience (as a musician, arranger, composer and producer of music) and in my opinion and considering that Nena Linda was created in 1992 and Noche de Fiesta in 1993 as indicated on their respective copyright certificates, because the lyrics (words) of Noche de Fiesta fit and go so well and closely with the melody of Nena Linda, it is highly unlikely and extremely improbable that the lyrics of Noche de Fiesta were not written to fit the melody of Nena Linda.

Based upon my professional experience (as a musician, arranger, composer and producer of music) and in my opinion and considering that Nena Linda was created in 1992 and Noche de Fiesta in 1993 as indicated on their respective copyright certificates, it is my opinion that the melody of Noche de Fiesta was copied and taken from Nena Linda.

Dated: September 15, 2006



Angel Fernandez

# Exhibit 9



ORIGINAL

1

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 -----x

5 FELIPE ROBLES VASQUEZ p/k/a RALDY VASQUEZ  
6 and CAMPEINO ENTERTAINMENT GROUP, INC.,

7 Plaintiffs,

8 - against -

9 FERNANDO TORRES NEGRON, TOMARA SOSA --  
0 PASUCAL, and JULIO DE LA ROSA-RIVE,

1 Defendants.  
2 -----x

3 November 22, 2006

4 11:00 a.m.

5 DEPOSITION of ANGEL FERNANDEZ,  
6 taken by the Defendants, pursuant to  
7 Notice, held at the offices of Borstein &  
8 Sheinbaum, LLP, 420 Lexington Avenue, New  
9 York, New York, before Debbie Zaromatidis,  
0 a Shorthand Reporter and Notary Public of  
1 the State of New York.  
2  
3  
4  
5

FERNANDEZ

identical nature of the melodies in Nena Linda and Noche de Fiesta is readily recognized by the listener, it is further recognized by the attached musical notation." Do you see that?

A. Right.

Q. And that is a true and accurate statement?

A. Yes.

Q. In the next paragraph down, middle of the third line at the end after a comment it says "The melodies are virtually identical."

Do you see that?

MR. SHEINBAUM: Which line is it? I am sorry.

MR. BENNETT: The third line down in the third paragraph.

A. Okay.

Q. After the comment "the melodies are virtually identical." Do you see that?

A. I see that.

Q. So the melodies are not exactly

FERNANDEZ

identical, correct?

A. They are -- they have differences. They are based on the same -- the same melody on the -- there are differences that I -- that are there to accomodate the lyrics, which were written in my opinion based on -- on the Nena Linda, the lyrics of Noche de Fiesta.

Q. But are the melodies identical or virtually identical?

A. They are -- they are not identical. They are virtually identical. They are not note for note identical.

Q. Going to the next page, page 4, the third line down which starts "however," it says, "However the second half of Noche de Fiesta contains a syncopated eighth note.

A. Where --

Q. It is (indicating) -- "However, the second half of Noche de Fiesta contains a syncopated eighth note followed by a quarter note whereas Nena Linda contains four eighth notes."

# Exhibit 10



AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS  
ONE LINCOLN PLAZA  
NEW YORK, NEW YORK 10023

AUGUST 19, 2004

17130

MR FERNANDO A TORRES  
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# Exhibit 11

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

FELIPE ROBLES VASQUEZ p/k/a )  
RALDY VASQUEZ and CAMPESINO )  
MUSIC ENTERTAINMENT GROUP, INC.)

Plaintiffs, )

vs. )

) No. 06 CV 0619

FERNANDO TORRES NEGRON, TAMARA )  
SOSA-PASCUAL and JULIO DE LA )  
ROSA-RIVE, )

Defendants. )

COPY

DEPOSITION OF FELIPE ROBLES VASQUEZ  
New York, New York  
Thursday, September 7th, 2006

Reported by:  
Jeremy Frank, MPM  
JOB NO. 187325a

Vasquez

MARK BUCKWALTER, was duly sworn to interpret the questions from English into Spanish, and the answers from Spanish into English.

FELIPE ROBLES VASQUEZ, called as a witness, having been duly sworn by a Notary Public, was examined and testified through the interpreter as follows:

EXAMINATION BY

MR. BENNETT:

Q. State your name for the record.

A. Felipe Robles Vasquez.

Q. State your address for the record.

A. Caretera La Isabela Residencial Irene #17 Alto Arro Hondo 3ro, Santo Domingo, Dominican Republic.

(Defendant's Exhibits A through D, premarked, for identification.)

Q. Good morning, Mr. Vasquez. My name is Bill Bennett. I'm going to be asking you some questions today. I expect that all of your answers will be honest and truthful. If at any time you need a break, let me know. If it is an appropriate time, we will give you



1 Vasquez

2 giving the ideas sung so that the arranger  
3 writes the notes that correspond to that idea.

4 Q. Has an artist ever hired you to be  
5 the musical arranger?

6 A. No.

7 Q. Do you know who the musical  
8 arrangers were for the song Noche de Fiesta?

9 A. I think it was Israel Casado.

10 Q. Did you ever work with Israel  
11 Casado before?

12 A. Yes, he worked on my record.

13 Q. What record is that?

14 A. Just One Night, Una Noche Nada  
15 Mas; just that one. Just that one.

16 Q. When you were working on the album  
17 Comercial, was Israel present?

18 A. While I was?

19 Q. In order to create the disk  
20 Comercial, there had to be musicians in a room  
21 playing music, correct?

22 A. Do you mean to finish this?

23 Q. No, let me start over.

24 Is it fair to say that the  
25 gentleman Israel worked on some of your

Vasquez

arrangements?

A. One arrangement.

Q. He also worked on the arrangement  
Noche de Fiesta?

MR. SHEINBAUM: Objection.

A. I think he did the arrangement for  
Noche de Fiesta, the musical arrangement.

Q. Did you ever play for him Nena  
Linda?

A. For Israel Casado?

Q. Yes.

A. No.

Q. He was not familiar with Nena  
Linda at any point in time?

A. It's impossible to say, maybe he  
heard it on the radio.

Q. Did you ever play the song for him  
with your guitar to get his opinion on how he  
would musically arrange Nena Linda?

A. To Israel?

Q. Yes.

A. It's impossible. He's not the one  
who arranged it, it was me and Alegria.

Q. Was the song, tell me what the

1 Vasquez

2 song is again that Israel worked on?

3 A. Una Noche Nada Mas, Just One  
4 Night.

5 Q. Was that song arranged at or about  
6 the time that Nena Linda was being arranged?

7 A. It's possible because it's part of  
8 the production. It's possible that there was  
9 an arrangement. I'm just saying that because  
10 I didn't have a company that, a strong company  
11 to -- and so things were done.

12 Q. Let me ask you this.

13 Do you know whether Alegria, is  
14 that his name?

15 A. We called him Alegria.

16 Q. Did Alegria work with musicians on  
17 the arrangement for Nena Linda without you  
18 being present?

19 A. No, he and I did it.

20 Q. Okay.

21 Do you know what musicians worked  
22 on your song Nena Linda?

23 A. To make the album, you mean?

24 Q. Yes.

25 A. I can mention some of them.

# Exhibit 12

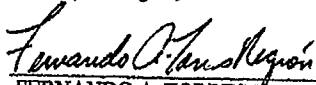
## SWORN STATEMENT

COMES NOW, FERNANDO A. TORRES NEGRÓN, of legal age, married, musician, school teacher, social security number 584-43-0337, and resident of Aibonito, Puerto Rico, and declare under penalty of perjury that:

1. My personal circumstances are correctly set above.
2. I am the sole composer of the songs entitled "Triste Final", "Noche de Fiesta", and "Bebo por Ti".
3. I registered the above mentioned compositions with ASCAP in 1994, under the belief that it was the adequate manner of protecting my Intellectual Property and Copyrights.
4. I additionally registered these songs with the U.S. Copyright Office in January, 31, 2002.
5. I composed the song "Triste Final" without requesting nor receiving any aid from Mr. Antonio Rivera, and it was inspired by a difficult personal situation I was undergoing at the time.
6. I have never authorized the use, copy, adaptation, recording, or distribution of the songs "Triste Final", "Noche de Fiesta" or "Bebo por Ti".
7. I have never met, spoken to, nor entered into an agreement with Ms. Sorymar Rivera-Matos.

The foregoing is true to the best of my personal knowledge and belief.

In San Juan, Puerto Rico, this 24<sup>th</sup> day of August, 2002.

  
FERNANDO A. TORRES-NEGRÓN

Affidavit No. 262 (copy)

Sworn and subscribed before me, personally appeared Fernando A. Torres-Negrón, of the above mentioned personal circumstances, identified by driver's license no. 2227045 issued by the Commonwealth of Puerto Rico.

In San Juan, Puerto Rico, this 24<sup>th</sup> day of August, 2002.



  
NOTARY PUBLIC

